

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSEPH TOWNSEND

Plaintiff,

v.

T. COOK, et al.,

Defendant.

No. 1:24-cv-01285 GSA (PC)

ORDER AND FINDINGS AND
RECOMMENDATIONS

ORDER RECOMMENDING THAT THIS
MATTER BE SUMMARILY DISMISSED
FOR FAILURE TO EXHAUST
ADMINISTRATIVE REMEDIES PRIOR TO
FILING COMPLAINT IN THIS COURT

See 42 U.S.C. § 1997e(a)

PLAINTIFF'S OBJECTIONS TO FINDINGS
AND RECOMMENDATIONS DUE IN
FOURTEEN DAYS

Plaintiff, a state prisoner proceeding pro se and in forma pauperis, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

For the reasons stated below, the undersigned will recommend that this matter be summarily dismissed for failure to exhaust administrative remedies prior to filing suit in this Court. Plaintiff will be given fourteen days to file objections to this order.

1 I. RELEVANT FACTS

2 On October 22, 2024, Plaintiff's complaint was docketed. ECF No. 1. Approximately
3 one month later, the Court conducted a cursory review of the complaint, which led to it issuing an
4 order to show cause. See ECF No. 8. In that order, the Court noted that in the complaint, when
5 Plaintiff was asked whether the grievance process at his prison had been completed, he responded
6 that he had not; that he was "still waiting for a response." See id. at 3 (order to show cause
7 referencing ECF No. 1 at 3).

8 Plaintiff was given fourteen days to file the showing of cause. ECF No. 8 at 3. To date,
9 Plaintiff has not filed it, nor has he requested an extension of time to do so. He has not responded
10 to the Court's order in any way.

11 II. DISCUSSION

12 The PLRA requires that a prisoner exhaust administrative remedies before submitting any
13 papers to the federal courts. Vaden v. Summerhill, 449 F.3d 1047, 1048 (9th Cir. 2006). Plaintiff
14 clearly states in his complaint that he has not done this. See ECF No. 1 at 3. In addition, his only
15 reason for not having done so – i.e., that he is "still waiting for a response" – does not fall within
16 any of the Ross exceptions. See id. Therefore, Plaintiff's complaint is improperly before this
17 Court. See 42 U.S.C. § 1997e(a) (stating no action can be brought by a prisoner under Section
18 1983 with respect to prison conditions until available administrative remedies have been
19 exhausted). For these reasons, the undersigned shall recommend that this matter be summarily
20 dismissed for failure to exhaust administrative remedies.

21 Accordingly, IT IS HEREBY ORDERED that the Clerk of Court shall randomly assign a
22 District Judge to this matter.

23 IT IS FURTHER RECOMMENDED that this matter be SUMMARILY DISMISSED
24 failure to exhaust administrative remedies prior to filing suit in this Court. See 42 U.S.C. §
25 1997e(a).

26 These findings and recommendations are submitted to the United States District Judge
27 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
28 after being served with these findings and recommendations, Plaintiff may file written objections

1 with the Court. Such a document should be captioned “Objections to Magistrate Judge’s Findings
2 and Recommendations,” and it shall not exceed fifteen pages.

3 The Court will not consider exhibits attached to the objections. To the extent that a party
4 wishes to refer to any exhibit, when possible, the party must reference the exhibit in the record by
5 its CM/ECF document and page number or reference the exhibit with specificity. Any pages filed
6 in excess of the fifteen-page limit may be disregarded by the District Judge when conducting the
7 28 U.S.C. § 636(b)(1)(C) review of the findings and recommendations. A party’s failure to file
8 objections within the specified time may result in the waiver of certain rights on appeal. See
9 Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014); Martinez v. Ylst, 951 F.2d 1153 (9th
10 Cir. 1991).

11
12 IT IS SO ORDERED.

13 Dated: **December 31, 2024**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE